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# Chapter 201

## Stormwater Management

**[HISTORY: Adopted by the Town Council of the Town of Windham as indicated in article histories. Amendments noted where applicable.]**

### Article I

#### Surface Water Protection

**[Adopted 8-13-2002; amended 12-19-2017 (Ch. 142 of the 1991 Code)]**

##### § 201-1 Purpose.

The purposes of this article are to prevent and minimize surface water pollution due to phosphorus contained in stormwater runoff from developed areas; to promote preventive measures to improve surface runoff water quality and lessen degradation to receiving watersheds and bodies of water within the Town of Windham; to prevent and control water pollution caused by soil erosion and sediment transport resulting from soil disturbance associated with building development; to protect and promote safe and healthful conditions for humanity; and to protect fish spawning grounds, aquatic life, and bird and other wildlife habitat in the Town.

##### § 201-2 Authority.

**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

This article has been prepared in accordance with the provisions of 38 M.R.S.A. § 435 et seq.

##### § 201-3 Applicability.

This article applies to all activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions, and a permit shall be required and a written soil erosion and sedimentation control plan.

- A. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
- (1) Mulching and revegetation of disturbed soil.
  - (2) Temporary runoff control features such as hay bales, silt fencing or diversion ditches. Projects within the Limited Residential District, Resource Protection District, General Development District, Stream Protection District, and the Highland Lake watershed must incorporate double temporary erosion control measures at the perimeter of the project. **[Amended 5-25-2021]**
  - (3) Permanent stabilization structures such as retaining walls or riprap.

~~B. Activities which require site plan approval from the Planning Board are to be prepared in accordance with prevailing best management practices as referenced shall include in the current issue of Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices.~~

**B.** Exempt from the requirements of this article are the following:

- (1) Activities in the shoreland zone which are governed by Chapter **185**, Shoreland Zoning.

- (2) Permit applications in subdivisions and site plans which have a Planning Board approved soil erosion and sediment control plan.
- (3) Normal agriculture as defined in Chapter **185**, Shoreland Zoning, § **185-17**.
- (4) Two hundred square feet or less of net impervious area (footprint). [**Amended effective 4-21-2022 by Order No. 22-048**]
- D. The maximum amount of soil area to be disturbed shall be based on the slope of the disturbed area, as outlined in Table I.

<b>Table I</b>	
<b>Ground Slope Range</b>	<b>Amount of Soil Disturbance (square feet)</b>
20%	500
10% to 20%	1,000
5% to 10%	2,000
2% to 5%	4,000

§ 201-4 **Intent.**

In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site and control stormwater runoff through the construction phase and strategic placement of structures, roads and driveways. The natural features and drainage patterns of the lot should be preserved using careful site design prior to any clearing or construction. The natural flow of water should be identified and undisturbed buffers protected to minimize off-site transport by stormwater. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible. The intent of this article is to have a zero off-site impact from any proposed development.

§ 201-5 **Exposed ground area.**

Any exposed ground area shall be temporarily or permanently stabilized within one week of the time the work was started by use of riprap, sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine months of the initial date of exposure. In addition:

- A. Where mulch is used, it shall be applied at a rate of a least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.
- B. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover (wood chips are acceptable).
- C. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

§ 201-6 **Soils.**

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Licensed, registered or certified professionals may include Maine certified soil scientists, Maine licensed professional engineers, Maine state-certified geologists and other licensed, registered or certified professionals who have proof of training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analyses of the characteristics of the soil and surrounding land and water areas, maximum groundwater elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist. Soil conditions that are inappropriate or uncorrectable in an environmentally acceptable manner shall be sufficient grounds for denial, even though the proposed use is otherwise permitted in that zone.

§ 201-7 **Parking areas and driveways.**

Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body and, where feasible, to retain all runoff on-site. Where runoff cannot be retained, on-site licensed professionals in this field shall review and certify, in writing, to assure that the purpose of this article is upheld.

§ 201-8 **Roadway drainage.**

In order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the average slope in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Road surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

§ 201-9 **Ditching.**

Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:

- A. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

Road Grade	Spacing (in feet)
0% to 2%	250
3% to 5%	200 to 135
6% to 10%	100 to 80
11% to 15%	80 to 60

16% to 20%

60 to 45

21%+

40

- B. Drainage dips may be used in place of ditch relief culverts only where the road grade is 10% or less.
- C. On road sections having slopes greater than 8%, ditch relief culverts shall be placed across the road at approximately a thirty-degree angle down slope from a line perpendicular to the center line of the road.
- D. On slopes of 8% or greater, surface materials shall be bituminous pavement, reclaimed asphalt or well compacted gravel (minimum compaction 95%).
- E. Ditch relief culverts shall be sufficiently sized by a licensed engineer or professional with expertise in hydrology and open channel flows and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]

#### § 201-10 Maintenance and repair.

Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads shall be maintained on a regular basis to assure effective functioning. When maintenance and/or repair is performed, such performance must be in accordance with best management practice.

- A. Duration of plan for temporary measures. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- B. Duration of plan for permanent measures. Permanent soil erosion and sedimentation control measures, such as, but not limited to, level-lipped spreaders, riprap installation, vegetated buffers, drainage dips and water turnouts, shall be protected with a maintenance agreement.

#### § 201-11 Stormwater runoff.

- A. Construction. All construction and development shall minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwater. Areas of connected impervious surfaces should be minimized to take full advantage of these features. Where runoff cannot be retained on-site, it shall be reviewed by licensed professionals in this field.
  - (1) Buffers (also know as "vegetative filter" or "filter strips"). Within the required setback of the corresponding zone, there shall be a vegetative buffer. Excluded from this requirement are all of the commercial zones. This buffer shall consist of landscaping, to include but not be limited to grass, trees, shrubs, and wood chips. Within this buffer, access to the property can be made for essential services and driveway access.
  - (2) Drainageways. Natural and man-made drainageways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty-five-year storm or greater, and shall be stabilized with vegetation or lined with riprap.
- B. Maintenance. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.
- C. Plan required. When required by this article, the Code Enforcement Officer or the Planning Board,

stormwater management plans shall be designed utilizing the most recent approved version of the Cumberland County Soil and Water Conservation District's and Maine DEP's Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices and the Maine DEP's Stormwater Management for Maine: Best Management Practices. Completed plans, when required above, may be reviewed by the Cumberland County Soil and Water Conservation District or other qualified professional firm, agency, or organization..

- D. General. All activities are expected to employ appropriate stormwater management practices regardless of the zone or district they are located in.
- E. Additional requirements for projects in the Limited Residential District, Resource Protection District, General Development District, Stream Protection District, and the Highland Lake watershed that are not subject to subdivision or site plan review. **[Amended 5-25-2021]**
- (1) The Code Enforcement Officer shall issue a stormwater and phosphorus management control permit if the applicant meets or exceeds 50 points based on the following point schedule. The applicant shall submit a sketch plan of the lot showing how each of the following point credits or deductions applies to the proposed development. The sketch plan shall show approximate locations and dimensions of each stormwater BMP, or other measure.
- (a) Credits.
- [1] Ten points for correcting an existing erosion problem on the project site, as approved by the Code Enforcement Officer.
- [a] Installing nonstructural BMP (vegetation, loam and seed, mulch, etc.).
- [b] Installing a structural BMP (woven geotextile mats and fabric, riprap, etc.).
- [c] Installing sediment control barriers until Subsection E(1)(a)[1][a] and [b] have been established.
- [2] Twenty points for an impervious area of less than 2,000 square feet.
- [3] Ten points for a clearing limitation of less than 20% of the lot, or 15,000 square feet, whichever is less; or 20 points for a clearing limitation of less than 15% of the lot, or 10,000 square feet, whichever is less.
- [4] Fifteen points for the installation of rock-lined drip edges or other infiltration system to serve no less than 50% of the new impervious area on the site. Test pit information certified by a licensed site evaluator, certified soil scientists (CSS) or certified geologist (CG) must show that three feet of separation exists between the seasonal high groundwater table and the bottom of any proposed infiltration structure. Infiltration systems must be sized to accommodate one inch of runoff from contributing impervious areas within the structure (this will include an assumption of 30% void space in washed stone) and designed in accordance with the details following approved engineering practices and techniques as published by the Maine Department of Environmental Protection's Best Management Practices (BMPs). **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- [5] Twenty-five points for the installation of rock-lined drip edges or other infiltration system to serve no less than 75% of the new impervious building area on the site. Test pit information certified by a licensed site evaluator, certified soil scientist (CSS) or certified geologist (CG) must show that three feet of separation exists between the seasonal high-groundwater table and the bottom of any proposed infiltration structure. Soil filtration or infiltration systems must be sized to accommodate one inch of runoff from contributing impervious areas within the structure (this will include an assumption of 30% void space in washed stone) and designed in accordance with the details following approved engineering practices and techniques as published by the Maine Department of Environmental Best

Management Practices (BMPs).

- [6] Twenty-five points for the installation of rain gardens or a soil filtration system designed to serve no less than 50% of the total new impervious area on the site. Rain gardens and soil filter systems shall be sized to accommodate one inch of runoff from contributing impervious areas, and designed in accordance with the details following approved engineering practices and techniques as published by the Maine Department of Environmental Best Management Practices (BMPs).
  - [7] Forty points for the installation of rain gardens or a soil filtration system designed to serve no less than 75% of the new impervious area on the site. Rain gardens and soil filter systems shall be sized to accommodate one inch of runoff from contributing impervious areas, and designed in accordance with the details following approved engineering practices and techniques as published by the Maine Department of Environmental Best Management Practices (BMPs).
  - [8] Thirty points for a fifty-foot-wide (no greater than 15% slope) natural wooded buffer strip, or a seventy-five-foot-wide, man-made, vegetated buffer (no greater than 8% slope) strip located down gradient and adjacent to the developed area, provided there is no channelization within the buffer.
  - [9] Thirty-five points for a seventy-five-foot-wide (no greater than 15% slope) natural wooded buffer strip, or a 100-foot-wide, man-made, vegetated buffer (no greater than 15% slope) strip located down gradient and adjacent to the developed area, provided there is no channelization within the buffer.
  - [10] Forty points for a 100-foot-wide (no greater than 15% slope) natural wooded buffer strip, or a 150-foot-wide, man-made, vegetated buffer (no greater than 15% slope) strip located down gradient and adjacent to the developed area, provided there is no channelization within the buffer.
- (b) Deductions.
- [1] Five points deducted for a new structure footprint exceeding 2,000 square feet, and an additional five points deducted for each additional 500 square feet of structure footprint.
  - [2] Five points deducted for clearing more than 50% of the lot. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (2) Alternate means of calculation. In those cases where the Code Enforcement Officer determines that use of the points system is inadequate to achieve the purposes of stormwater and phosphorous management control or is otherwise inappropriate because of particular circumstances of the property, the Code Enforcement Officer may assess conformance with this standard based on the following:
- (a) A licensed State of Maine professional engineer or soil evaluator or certified professional in soil and erosion control certifies that the proposed treatment measure matches or exceeds the performance of the treatment measure under the specific point system allowance. It shall be the engineer's responsibility to provide evidence that the measure has been approved by the Maine Department of Environmental Protection or provide other certification into comparable treatment by professional testing results.

#### § 201-12 **Conditions of permits.**

**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

Permits granted under this article may be made subject to additional conditions or restrictions to ensure conformity with the purposes and provisions of this article. Each application for a building permit shall be accompanied by the building permit fee set by the Town. Each application to the Code Enforcement Officer for a permit to erect a new building or structure or to enlarge or to move an existing one shall be accompanied by a site plan showing the measurements of the lot and of all buildings, driveways, yards and parking spaces. Drainageways, storm drains, streams existing and proposed, and the intended use of land and

buildings shall be indicated clearly. Additional measures may be required in order to comply with this article, such as drainageways and easements, soil erosion control measures, and all features to be installed for compliance with this article. Any other application for a building permit and any application for a permit shall be accompanied by a description of the proposed use and existing use of the land and buildings and such further details as the Code Enforcement Officer may require for a clear understanding of the case.

**§ 201-13 Appeals.**

A. Board of Appeals. See Chapter **120**, Land Use, Article **11**, Board of Appeals. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]

- (1) The Board shall consist of five members. In addition, said Board shall have one alternate member, who shall have all the rights of a full member, except that said alternate may vote only in the absence of a full member.
- (2) The term of office of members shall be three years, except that initial appointments of members shall be made for one year, two years and three years, respectively.
- (3) A municipal official or his spouse shall not be a member of the Board.
- (4) When there is a vacancy, the municipal officers shall appoint a person to serve for the unexpired term.
- (5) The Board shall elect a Chair and Vice Chair from its own membership.
- (6) Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.
- (7) A member of the Board may be dismissed for cause by the municipal officers before the expiration of his term.
- (8) A Secretary to the Board shall be appointed by the appropriate Town officials.

B. Jurisdiction and authority.

- (1) In addition to the power granted by 30-A M.R.S.A. § 2691, the Board of Appeals shall have the following jurisdiction and authority:
  - (a) Subject to the provisions of this article, to hear and decide appeals from orders, decisions, determinations or interpretations made by the Code Enforcement Officer.
  - (b) Subject to the provisions of this article, to hear and grant or deny application for variances from the terms of this article. A variance can only be granted where undue hardship is proven. "Undue hardship" is defined to mean:
    - [1] That the land in question cannot yield a reasonable return unless the variance is granted;
    - [2] That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood;
    - [3] That the granting of a variance will not change the essential character of the locality; and
    - [4] That the hardship is not the result of action taken by the applicant or a prior owner.
- (2) Permitted variances run with the land and thus pass from one owner to the next.

- (3) Attention be given to the following wherever applicable:
- (a) Location, character and natural features.
  - (b) Fencing and screening.
  - (c) Landscaping, topography and natural drainage.
  - (d) Vehicular access, circulation and parking.
  - (e) Pedestrian circulation.
  - (f) Signs and lighting.
  - (g) All factors which affect health, welfare and safety.
- C. In granting appeals under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this article.

§ 201-14 **Procedure.**

- A. The Board of Appeals is established according to the Chapter **120**, Land Use, and shall operate according to the rules and procedures set forth therein unless otherwise modified by this article. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. Minutes. The Secretary shall record a permanent record of all Board meetings. All meeting minutes and all correspondence of the Board shall be maintained in the Town office. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof. Notice of any decisions shall be mailed or hand-delivered to the petitioner, his representative or his agent and the Department of Environmental Protection.
- C. Public hearing. For all appeals, the Board shall hold a public hearing as prescribed herein. At least seven days before the hearing, the Code Enforcement Officer or his assistant shall notify by mail the owners of properties abutting the property for which the appeal or application is made. Failure to receive this notice shall not invalidate the proceedings herein prescribed. The owners of properties shall be considered to be the parties listed by the Assessor as those against whom those taxes are assessed. Notice of the hearing shall also be placed at least twice in a newspaper of general circulation at least seven days prior to the hearing. The Code Enforcement Officer or his assistant may attend all hearings and present to the Board all plans, photographs or other factual materials which are appropriate to an understanding of the case.
- D. Appeals. Any person and any municipal official or board of officials aggrieved by a decision of the Code Enforcement Officer or who wishes to request a variance from this article or who wishes a use permit may file an application with the Board of Appeals. An appeal of a decision made by the Code Enforcement Officer must be filed within 30 days of the date of the decision. Application materials submitted to the Board must include a completed application form, including a location and site plan if appropriate, and a fee set by the Town Council, which must be submitted to the Code Enforcement Officer at the time the appeal request is submitted. All application materials must be submitted for the Board's review at least 14 days prior to the Board meeting at which the applicant wishes to be heard. All meetings of the Board are public hearings. At the public hearing, the applicant or his representative must appear before the Board to present the proposal and to answer questions. Other interested parties, such as adjacent property owners, will also be permitted to speak for or against the appeal. Written notice of



the decision of the Board shall be sent to the appellant within seven days of the date of the decision. Any aggrieved party may appeal from the decision of the Board to the Superior Court within 45 days of the decision date.

- E. Decision. After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be entertained by the Board until one year shall have elapsed from the date of said decision, except that the Board may entertain a new appeal if the Board believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done or it finds that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.
- F. Reconsideration. In accordance with 30-A M.R.S.A. § 2691, Subsection 3F, the Board may reconsider any decision reached under this section within 45 days of its prior decision. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony as provided in this section. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- G. Expiration date. The right of any variance from the terms of this article granted by the Board of Appeals shall expire if the work or change permitted under the variance is not begun within six months or substantially completed within one year of the date of the vote by the Board. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

#### § 201-15 Enforcement.

- A. Nuisances. Any violation of this article shall be deemed to be a nuisance.
- B. Code Enforcement Officer.
  - (1) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this article. If the Code Enforcement Officer shall find that any provisions of this article is being violated, he or she shall notify, in writing, the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.
  - (2) The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this article.
  - (3) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- C. Legal actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this article in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this article and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless:
  - (1) There is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that

the owner acted in bad faith; or

- (2) The removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
- D. Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this article shall be penalized in accordance with 30-A M.R.S.A. § 4452. Current penalties include fines of not less than \$100 nor more than \$2,500 per violation for each day that the violation continues.

## Article II Post-Construction Stormwater Management

**[Adopted 6-9-2009 (Ch. 144 of the 1991 Code)]**

### § 201-16 Purpose.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the Town of Windham, through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's small municipal separate storm sewer systems general permit.

### § 201-17 Objectives.

This article seeks to ensure that post-construction stormwater management plans are followed and stormwater management facilities are properly maintained and pose no threat to public safety

### § 201-18 Definitions.

For the purposes of this article, the terms listed below are defined as follows:

#### **APPLICANT**

A person with requisite right, title or interest or an agent for such person who has filed an application for new development or redevelopment that requires a post-construction stormwater management plan under this article.

#### **BEST MANAGEMENT PRACTICES (BMP)**

Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

#### **CLEAN WATER ACT**

The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

#### **CONSTRUCTION ACTIVITY**

Construction activity, including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

#### **DISCHARGE**

Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to waters of the state. "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete

fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged.

### **DISTURBED AREA**

Clearing, grading and excavation. Mere cutting of trees without grubbing, stump removal, disturbance or exposure of soil is not considered disturbed area. Disturbed area does not include routine maintenance but does include redevelopment. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

### **ENFORCEMENT AUTHORITY**

The Code Enforcement Officer(s) authorized by the municipality to administer and enforce this article.

### **MUNICIPAL PERMITTING AUTHORITY**

The municipal official or body that has jurisdiction over the land use approval or permit required for a new development or redevelopment.

### **MUNICIPAL SEPARATE STORM SEWER SYSTEM or MS4**

Conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

### **MUNICIPALITY**

The Town of Windham.

### **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT**

A permit issued by the U.S. Environmental Protection Agency (EPA) or by the Maine Department of Environmental Protection (DEP) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

### **NEW DEVELOPMENT**

Any construction activity on unimproved premises.

### **PERSON**

Any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity.

### **POLLUTANT**

Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

### **POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN**

BMPs and stormwater management facilities employed by a new development or redevelopment to meet the stormwater standards of the municipality's subdivision, site plan, or other zoning, planning or other land use ordinances and approved by the municipal permitting authority.

### **PREMISES**

Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the urbanized area of the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

### **QUALIFIED THIRD-PARTY INSPECTOR**

A person who conducts post-construction stormwater management facilities inspections for compensation and who has received the appropriate training for such inspections from DEP.

### **REDEVELOPMENT**

Construction activity on premises already improved with buildings, structures, or activities or uses, but does not include such activities as exterior remodeling.

### **REGULATED SMALL MS4**

Any small MS4 regulated by the State of Maine general permit for the discharge of stormwater from small municipal separate storm sewer systems (general permit), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside a UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

### **SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM or SMALL MS4**

Any MS4 that is not already covered by the Phase 1 MS4 stormwater program, including municipally owned or operated storm sewer systems; state or federally owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities; and military bases and facilities.

### **STORM DRAINAGE SYSTEM**

The municipality's regulated small MS4.

### **STORMWATER**

Any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "stormwater" has the same meaning as "storm water."

### **STORMWATER MANAGEMENT FACILITIES**

Any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the post-construction stormwater management plan for a new development or redevelopment.

### **URBANIZED AREA ("UA")**

The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

### **§ 201-19 Applicability.**

- A. In general. This article applies to all new development and redevelopment within the urbanized area that discharges stormwater to the municipality's MS4 and to associated stormwater management facilities.
- B. Exception. This article does not apply to new development or redevelopment on a lot, tract or parcel ~~wheredisturbing less than one acre. that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the municipality's subdivision or other zoning, planning or other land use ordinances; said lot,~~

~~tract or parcel shall not require additional review under this article but shall comply with the post-construction stormwater management plan requirements for that approved subdivision.~~

**§ 201-20 Post-construction stormwater management plan approval.**

- A. General requirement. Notwithstanding any article provision to the contrary, and except as provided in § 201-19B above, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this article is applicable shall receive such permit or approval for that new development or redevelopment unless the applicant also receives approval under the municipality's subdivision, site plan or other zoning, planning or other land use ordinances for its post-construction stormwater management plan and stormwater management facilities for that new development or redevelopment, even if the municipality's subdivision, site plan or other zoning, planning or other land use ordinances would not otherwise apply to that new development or redevelopment.
- B. Notice of BMP discharge to municipality's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this article is applicable, the applicant shall notify the municipal permitting authority if its post-construction stormwater management plan includes any BMP(s) that will discharge to the municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

**§ 201-21 Post-construction stormwater management plan compliance.**

- A. General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the municipality's subdivision, site plan or other zoning, planning or other land use ordinances shall demonstrate compliance with that plan as follows:
- (1) A qualified third-party inspector hired by that person shall, at least annually, inspect the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
  - (2) If the stormwater management facilities require maintenance to function as intended by the approved post-construction stormwater management plan, that person shall take corrective action(s) to address the deficiency or deficiencies.
    - (a) Deficiencies will be corrected within 60 days of notice by the Town and a record of the correction action taken shall be provided to the Town's Enforcement Authority within the same 60-day period.
    - (b) If it is not possible to correct the deficiency within 60 days, the property owner will coordinate with the Town to establish an expeditious schedule to correct the deficiency and will provide a record of the corrective actions taken.
  - (3) A qualified third-party inspector hired by that person, shall, on or by ~~June~~May 1 of each year, provide a completed and signed certification to the enforcement authority in a form identical to that attached as Appendix 1 to this article, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by approved post-construction stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by approved post-construction stormwater management plan, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken based on the timeline outlined in 2(a) & 2(b) above.

- (4) In addition, any persons required to file an annual certification under this § **201-21** shall include with the annual certification payment in the amount set by the Town Council to pay the administrative and technical costs of review of the annual certification.
- B. Right of entry. In order to determine compliance with this article and with the post-construction stormwater management plan, the enforcement authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.
- C. Annual report. Beginning July 1, 2009, and each year thereafter, the municipality shall include the following in its annual report to the Maine Department of Environmental Protection:
- (1) The cumulative number of sites that have stormwater management facilities discharging into their MS4;
  - (2) A summary of the number of sites that have stormwater management facilities discharging into their MS4 that were reported to the municipality;
  - (3) The number of sites with documented functioning stormwater management facilities; and
  - (4) The number of sites that required routine maintenance or remedial action to ensure that stormwater management facilities are functioning as intended.
- D. Inspections. The municipality shall annually inspect a percentage of stormwater management facilities located in the direct watershed of a lake most at risk from new development or in watersheds of an urban impaired stream. If the owner or operator of a stormwater management facility hires a qualified third-party inspector, the permittee will have no inspection requirements. If the owner or operator of a stormwater management facility does a self inspection, the municipality is required to conduct the following inspection schedule:
- (1) One to 10 post-construction sites: inspect at least one site, or 40% (whichever is greater).
  - (2) Eleven to 30 post-construction sites: inspect at least four sites, or 30% (whichever is greater).
  - (3) Thirty-one to 60 post-construction sites: inspect at least nine sites, or 25% (whichever is greater).
  - (4) Sixty-one to 100 post-construction sites: inspect at least 15 sites, or 20% (whichever is greater).
  - (5) One hundred one to 160 post-construction sites: inspect at least 20 sites, or 17% (whichever is greater).
  - (6) Over 160 post-construction sites: inspect at least 27 sites, or 11% (whichever is greater).

**§ 201-22 Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article or the post-construction stormwater management plan, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

A. Notice of violation.

- (1) Whenever the enforcement authority believes that a person has violated this article or the post-construction stormwater management plan, the enforcement authority may order compliance with this article or with the post-construction stormwater management plan by written notice of violation to that person, indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- (a) The abatement of violations and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
  - (b) At the person's expense, compliance with BMPs required as a condition of approval of the new development or redevelopment, the repair of stormwater management facilities and/or the restoration of any affected property; and/or
  - (c) The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.
- (2) If abatement of a violation, compliance with BMPs, repair of stormwater management facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- B. Penalties/fines/injunctive relief. Any person who violates this article or the post-construction stormwater management plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorneys' fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this article or the post-construction stormwater management plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to, attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article or of the post-construction stormwater management plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.
  - C. Consent agreement. The enforcement authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article or of the post-construction stormwater management plan for the purposes of eliminating violations of this article or of the post-construction stormwater management plan and of recovering fines, costs and fees without court action.
  - D. Appeal of notice of violation. Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the Board of Appeals. The notice of appeal must be received within 30 days of the date of receipt of the notice of violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the enforcement authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
  - E. Enforcement measures. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the enforcement authority's decision, then the enforcement authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

**§ 201-23 Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

**§ 201-24 Basis of enactment.**

The Town of Windham enacts this "Post-Construction Stormwater Management Control Ordinance" (the

"Ordinance") pursuant to 30-A M.R.S.A. § 3001 (Municipal Home Rule Ordinance Authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122[(U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES"))]. The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Windham as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this article as part of the municipality's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

**Attachments:**

[Attachment 1 - Appendix 1, Annual Stormwater Management Facilities Certification](#)